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Committee on the Elimination of Racial Discrimination

Consideration of reports submitted by States parties under article 9 of the Convention

Fifth to seventh periodic reports of States parties due in 2014

Kenya*

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Acronyms and Abbreviations

ASALs	Arid and Semi-Arid Lands
CAJ	Commission on Administrative Justice
CRA	Commission on Revenue Allocation
DPP	Director of Public Prosecution
FPE	Free Primary Education
IEBC	Independent Electoral and Boundaries Commission
IPCRM	Integrated Public Complaints Referral Mechanism
IPOA	Independent Policing Oversight Authority
KNCHR	Kenya National Commission on Human Rights
MTP I	Second Medium Term Plan
NCAJ	National Council on Administration of Justice
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NPS	National Police Service
NPSC	National Police Service Commission
TJRC	Truth, Justice and Reconciliation Commission

I. Introduction

1. The Government of the Republic of Kenya has the honour to submit to the Committee on the Elimination of Racial Discrimination, in conformity with the International Convention on Elimination of All Forms of Racial Discrimination , it's 5th-7th Combined Periodic Report under the Convention. The report covers the period from 2011 to 2015. Responses to the Concluding Observations of the Committee on Elimination of Racial Discrimination Made to Kenya for the initial-Fourth Periodic Reports to the Committee are attached herewith as an annexure.

2. This Periodic Report is divided into three parts. Part I is the Report's introduction. Part II explains the measures which Kenya has taken in the period from 2011-2015 to ensure implementation of its obligations under the Convention.

3. This Report was prepared by the Office of the Attorney General and Department of Justice in consultation with relevant line Ministries, relevant Constitutional and statutory bodies, and civil society organisations. In particular, the National Cohesion and Integration Commission (NCIC), the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) were part of these consultations. At least two day multi- stakeholders' consultations and one day validation meeting were held.

4. Kenya has realised notable milestones in the elimination of racial discrimination since it last reported to the Committee in 2010. The Constitution of Kenya 2010 is at the core of the State's normative and institutional framework. It establishes a governance structure comprising two levels of governments, at the national and county levels. The national governance structure includes the Executive branch headed by the President of the Republic, a two-chamber Legislature comprising the National Assembly and the Senate, and a Judiciary including the Supreme Court, Court of Appeal, High Court and Magistrates' Courts. The Constitution also establishes multiple Constitutional Commissions and Independent Offices to deal with key governance themes such as human rights, land, corruption, prosecution, revenue allocation, financial management and security. The Bill of Rights in the Constitution embraces a far broader range of rights than ever before and includes economic, social and cultural rights which are framed as justiciable rights. Kenya has 47 devolved governments which operate at the county level and include County Executives and County Assemblies.

5. The Constitution under Article 2 (6) provides that international and regional human rights instruments to which Kenya is a party are part of the law. The State has enabled this Constitutional provision by passing the Treaty Making and Ratification Act 2012 which gives Parliament the function of approving treaty ratification.

6. The last General Elections were notable in consolidating protection against racial discrimination. The March 4 2013 polls were undertaken without any inter-ethnic violence. This was particularly important in light of the post-election violence which ravaged the country following the 2007 General Elections. The challenge to the presidential results was also undertaken in line with the law through a presidential petition before the Supreme Court *(Raila Odinga & 2 others v. Independent Electoral and Boundaries Commission & 3 others (2013) eKLR)* whose decision all the contending parties respected.

7. The Second Medium Term Plan (MTP II) (2013-2017) establishes strategies that the State will use towards the comprehensive realisation of the Kenya Vision 2030. The social pillar establishes policy guidance in respect of key sectors such as education and training; health; environment, water and sanitation; population, urbanisation and housing; and gender, youth and vulnerable groups. The framing and implementation of development policies is now informed by a rights based approach, as distinct from past supply-side

priorities, particularly in light of the protections and guarantees on economic, social and cultural rights established in Article 43 of the Constitution.

8. Following an extremely consultative process, the Office of the Attorney General and the Department of Justice finalised the National Policy and Action Plan on Human Rights (2013) which is presently awaiting parliamentary approval. The Policy provides a comprehensive framework to give effect to the Bill of Rights in the Constitution.

II. Policy, Legislative, Judicial, Administrative and other measures adopted to give effect to the Convention

A. Article 1: Definition of racial discrimination and application of Convention

1. Definition of racial discrimination

9. Article 27 of the Constitution outlaws direct or indirect discrimination by the State or a person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. This provision is strengthened further by Article 10 (2) (b) of the Constitution which lists the national values and principles to include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.

10. Kenya's understanding of the meaning of discrimination on ethnic grounds is guided by the definition of racial discrimination in Article 1 of the Convention and arises from the recognition that racial discrimination in the country manifests itself by and large through ethnic-based discrimination. The State has instituted policy, legislative, administrative and judicial measures to protect individuals against such discrimination. While the Constitution and statutes do not define racial discrimination, the National Cohesion and Integration Commission Act (No. 12 of 2008), which outlaws discrimination on ethnic grounds, describes an ethnic group as a group of persons defined by reference to colour, race, religion or ethnic or national origins; and it lists ethnic grounds as colour, race, religion, nationality or ethnic or national origins.

11. At the same time, Kenya's approach to the subject of racial and ethnic discrimination involves Article 56 of the Constitution which requires the State to put in place affirmative action programmes for minorities and marginalised groups. Article 260 of the Constitution provides a comprehensive definition of a marginalised community: A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or Pastoral persons and communities, whether they are (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

2. Application of Convention

12. The Convention is applicable to all persons in Kenya with the exception of a few rights which apply only to citizens. Article 35 of the Constitution excludes non-citizens from enjoying the right of access to information held by the State; or information held by

another person and required for the exercise or protection of any right or fundamental freedom. Article 38 of the Constitution precludes non-citizens from exercising political rights such as forming or participating in the formation of a political party; the right to free, fair and regular elections; and the right to vote or stand for election to public office. Under Article 39 of the Constitution, while every person has the right to freedom of movement and the right to leave Kenya, only citizens have the right to enter, remain in and reside anywhere in the country. Under Article 78 of the Constitution, a person who holds dual citizenship may not be a member of the Defence Forces or a State Officer such as the President, member of Cabinet or Member of Parliament. The Basic Education Act 2013 which prohibits the charging of tuition fees in public schools nonetheless provides that such fees may be charged in relation to non-citizens. As well, under Section 19 of the Social Assistance Act 2013, the entitlement to receive social assistance does not extend to non-citizens.

13. The limitations to non-citizens described above arise from genuine concerns that the country has limited resources and that these should first and foremost benefit citizens. The State though continues to recognise that the basic human rights of all individuals should be guaranteed and in particular that individuals under distress of life or limb should be given protection regardless of their nationality. Kenya has also lately suffered greatly from acts of terrorism, and the Government has sought firmer measures to ensure the protection of Kenyans and other residents. The courts though have remained steadfast in ensuring protection of the fundamental rights of all individuals residing in Kenya.

3. Discrimination against particular nationalities

14. The Constitution, in respect of a few rights, makes distinctions between citizens and non-citizens (cf: paragraph 13). No law however targets any particular nationality for discrimination. Kenya continues to have a high population of refugees who have fled civil strife in their countries and sought shelter in the country. By the end of 2015, the UNHCR estimates that, Kenya will host about 700,000 refugees. In *Coalition for Reform and Democracy and Kenya National Commission on Human Rights v. Republic of Kenya (Petition No. 628 and Petition No. 630 of 2014)*, the High Court determined that the number of refugees in the country could not be capped to a specific maximum figure because this would violate the country's international obligations.

4. Special measures

15. Article 27 (6) of the Constitution provides that the State shall take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups because of past discrimination. In adopting this provision, Kenyans appreciate the importance of ensuring all individuals and groups are substantively equal as well as protecting all from direct as well as indirect discrimination. Indeed, courts have recognised that State policy may from time to time involve specific measures that ensure substantive equality for disadvantaged Kenyans. In *John Kabui Mwai and 3 Others v. Kenya National Examination Council and 2 Others (2011) eKLR*, the High Court determined that it was proper for the Government to temper merit with equity to ensure that applicants from public primary schools also get fair access to public secondary schools. Without such a policy, public secondary schools would be occupied almost fully by applicants from private primary schools.

16. The Constitution recognises the importance of not maintaining separate rights for different racial groups and provides that such measures should not be continued once set objectives are realised. Article 260 of the Constitution defines affirmative action as including any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom. Article 27 (7) of the Constitution

provides that the envisaged special measures shall be determined on the basis of genuine need. In furtherance of this provision, Section 14 of the National Cohesion and Integration Act provides that an act will not be deemed discriminatory if it is done to afford persons of a particular ethnic group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits.

17. The Constitution also elaborates on how rights and fundamental freedoms apply to certain groups of persons: children (Article 53), persons with disabilities (Article 54), youth (Article 55), minorities and marginalised groups (Article 56), and older members of society (Article 57).

B. Article 2: Measures for Condemning and Seeking Elimination of Racial Discrimination

1. Effecting the undertaking to engage in no acts or practices of racial discrimination against any person or institution and to ensure the conformance of public institutions with the obligation

18. Article 27 (4) of the Constitution prohibits the State from discriminating directly or indirectly against any person on any ground, including race, ethnic or social origin and colour. Article 27 also guarantees everyone the right to equal protection and equal benefit of the law. Article 10 (2) (b) of the Constitution identifies non-discrimination as one of the national values and principles of governance that bind all State organs, State officers, public officers and all persons wherever they apply or interpret the Constitution, enact, apply or interpret any law and make or implement public policy decisions. Under Article 232, the values and principles of the Public Service include: representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of men and women, members of all ethnic groups and persons with disabilities.

19. In conforming to these provisions, State organs as well as public offices, including national and county executives, national and county parliaments as well as the judiciary, are bound to ensure that policies, legislation and administrative actions which they generate do not perpetuate or enhance discrimination. The Government has put in place policies and laws to ensure a normative and institutional framework to ensure that public institutions conform to that requirement.

20. The National Cohesion and Integration Act is the enabling legislation on national cohesion and integration. The Act, outlaws discrimination on the grounds of ethnicity, race, colour, religion, nationality or origin in both the private and public spheres of national life. The legislation establishes the National Cohesion and Integration Commission (NCIC). The Commission's overall mandate is to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof. One function of the Commission is promoting equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government. Specifically, the Act outlaws: discrimination in employment in all public establishments (Section 7); Discrimination in relation to membership of an organisation (Section 9);Discrimination in the provision of services to clients or prospective clients by agencies such as a qualifying body, licensing authority, planning authority, public authority, employment agency, educational establishment or body offering training (Section 10); Discrimination in access to and distribution of public resources; and discrimination in property ownership, management and disposal.

Other legislation that prohibit discrimination include: the County Governments Act 2012; Section 65 provides that County Public Service Boards must when making appointments ensure that at least thirty percent of entry level vacant posts are filled by candidates who are not from the dominant ethnic community in the county. The challenge here however is that, a study undertaken by the NCIC indicated that to date only 18 of Kenya's 47 Counties have so far complied with this requirement.

21. The Basic Education Act specifically makes it a responsibility of the Government to ensure that children belonging to marginalised, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing their basic education. The Act also creates several criminal offenses.

22. The State continues to take policy and administrative measures to ensure that public institutions do not exacerbate racial or ethnic discrimination. The NCIC has drafted the Kenya Ethnic and Race Relations Guidelines which provide a strategic framework for promoting and ensuring integration, cohesion and peaceful coexistence amongst all communities. The Guidelines emphasise ethnic and racial inclusion to ensure that people from all groups are represented in employment, governance structures, planning, development initiatives, public deliberations, democratic arrangements and national educational institutions. The NCIC has also prepared the Inclusivity Charter which requires County Governments to be inclusive in their recruitment process. It also has prepared Diversity Charters for staff recruitment by Universities.

23. Ensuring compliance by public institutions with the obligation to desist from engaging in any practice of racial discrimination has taken many forms. The Constitution and statutes have established institutions to check the performance of other institutions and persons. Ensuring conformity by the Police Service has been a particular concern for the State and Kenyans generally, leading among other things to the establishment of the National Police Service (NPS), established by the National Police Service Act; and the National Police Service Commission (NPSC), established by the National Police Service Commission Act. The National Police Service Commission Act in section 5 requires the NPSC to ensure gender, regional and ethnic balance while undertaking police recruitment. At the same time, more than 17,000 police officers have been trained on fair, just and humane treatment of people.

24. The functions of the Independent Policing Oversight Authority (IPOA), which is established by the Independent Policing Oversight Authority Act 2011, include investigating and recommending sanctions in relation to complaints relating to disciplinary or criminal offenses committed by members of the Police Service. When allegations were made that security operations were profiling individuals on the basis of ethnicity in countering terrorism, the IPOA advised the National Police Service (NPS) to ensure that its officers execute their work in terms of the Constitution and that they should not use racial, ethnic, national or religious characteristics as a basis for making decisions on those suspected to have committed crimes, since this may amount to discrimination. Similarly, the IPOA stressed that Constitutional guarantees for detained persons apply to all persons regardless of their nationality, ethnicity or religion. As a last resort, the Authority has on occasion sought judicial intervention to ensure that the NPS and National Police Service Commission (NPSC) execute their mandates without discrimination. In *Independent Policing Oversight Authority & Another v. Attorney General & 660 others (2014) eKLR*, the IPOA successfully sought the annulment of a police recruitment exercise undertaken by the NPSC in July 2014 on the basis that the recruitment exercise did not comply with the Constitution.

25. The country faces challenges with regard to expressions of negative ethnicity which continue to permeate some areas of life. Devolution and its attendant creation of 47 counties as well as the rapid increase of universities across the country, reaching 22 in

2014, has encouraged a misplaced sense of local ethnic entitlement at the expense of other ethnic communities. To combat this state of affairs the Courts have interpreted Article 27 of the Constitution in ways that have stopped State institutions from engaging in acts or practices of racial discrimination against persons, groups of persons or institutions. In *Hersi Hassan Gutale and Another v. Attorney General and Another (2013) eKLR*, two Kenyans of Somali origin sought orders against the Registrar of Persons who had denied them second-generation identity documents. They had been denied new-generation identity cards after being screened by a Government task force which had been appointed to confirm the veracity of registration documents of all Kenyans of Somali origin. The High Court directed the Principal *Registrar of Persons to consider the petitioners' application for new-gene*ration identity documents within 45 days. The Court determined *inter alia* that nothing in the case showed that the Registrar had addressed himself to the question of the petitioners' citizenship. The petitioners held Kenyan birth certificates, and had Kenyan passports and old-generation identity cards. Furthermore, the citizenship of a natural born citizen or privileges or benefits of citizenship could not be taken away by refusal to provide documents of identification.

2. Giving effect to the undertaking to prohibit and eradicate racial discrimination by any person or organisation

26. Article 27 (5) of the Constitution prohibits a person from discriminating directly or indirectly against another person on any grounds including race, ethnic or social origin and colour. The classes of persons bound by this prohibition include a company, association or other body of persons whether incorporated or unincorporated (Article 260 of the Constitution).

27. Article 46 of the Constitution read together with the Consumer Protection Act 2012 offers extensive protections for consumers to prevent unfair practices in consumer transactions. The Act protects consumers against suppliers in respect of matters such as reasonable merchantability of the quality of goods or services; maximum chargeable percentage ceiling on a consumer agreement that includes an estimate; interpretation of ambiguities in a consumer agreement in favour of the consumer; and protection of a recipient of unsolicited goods or services in respect of their use or disposal. The Act establishes the Kenya Consumers Protection Advisory Committee which has policy-making, advisory and administrative functions towards consumer protection. The Government appointed the inaugural Committee in December 2013.

28. Judicial decisions in relation to discrimination by persons or private institutions have also been radical. In *Rose Wangui Mambo & 2 Others v. Limuru Country Club & 17 others (2014) eKLR*, the petitioners successfully challenged as discriminatory a by-law of Limuru Country Club which sought to exclude women golf members from participating in its general meetings. The petitioners were reinstated to full membership of the club with all attendant benefits. In *VMK v. CUEA (2013) eKLR*, a claimant filed successfully for discrimination by her employer who had dismissed her from employment due to her pregnancy and on the basis of her HIV status. The claimant had been tested without her consent and the information disclosed to her colleagues and superiors.

3 Giving effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organisations

29. One function of the NCIC is to discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity or race. In fulfilling this function, the NCIC has received complaints about and investigated politicians and other persons who have made statements or acted in a way that tended towards advocacy of ethnic discrimination and to this end at least 7 cases

are being prosecuted. For example, the Director of Public Prosecutions (DPP) is, on the recommendation of the NCIC, is prosecuting a Member of Parliament who made remarks that could be interpreted to be derogatory to Kenyan communities who do not perform the ritual of male circumcision. These comments equated uncircumcised men with boys who therefore were unsuitable as leaders.

4. Implementing effective measures to review amend or repeal national and local policies, laws and regulations whose effect is to create or perpetuate racial discrimination

30. The State has reformed and revitalised its law-making agencies to enable them to undertake their work effectively. In particular, the Kenya Law Reform Commission has been granted an autonomous statutory mandate through the Kenya Law Reform Commission Act, 2013. The functions of the Kenya Law Reform Commission include reviewing and recommending review of laws to align them with the Constitution. This institution is fortified by the Office of the Attorney General and Department of Justice and the Commission for the Implementation of the Constitution, which were given the mandate of monitoring, facilitating and overseeing the development of legislation and administrative procedures required to implement the Constitution. The KLRC is undertaking an audit of all laws in Kenya in order to bring them in line with constitutional provisions.

31. The NCIC has prepared a document known as "a Framework and Checklist for Incorporating National Cohesion and Integration Principles into Kenya's Laws and Policies" to guide all agencies as they monitor policies, laws and regulations which create or perpetuate racial discrimination. The Framework offers guidance in respect of relevant Constitutional and statutory obligations as well as how to craft implementation and monitoring indicators.

32. One of the ways in which the State has positioned itself to take effective measures against racial discrimination is by collecting accurate data on the racial and ethnic composition of Kenya's population. Towards this end, the 2009 National and Housing Population Census was disaggregated on multiple bases, including age, sex and administrative units.

33. With this information, public institutions have been directed to ensure that no ethnic community occupies more than one-third of public sector jobs. Recent assessments highlight the challenges the State faces in achieving the right balance between various population groups in public institutions. Table 1 shows the ethnic distribution of the national population as compared to the ethnic distribution of civil service jobs.

Table 1
Ethnic Distribution of national Population and Civil Service Jobs, 2011

	Population (2009 Census)				
Ethnic Group	*Numbers*	*Share (%)*	*Number in the Civil Service*	*Share of Civil Service Jobs (%)*	*Population Job Share Variance*
Kikuyu	6,622,576	17.7	47,146	22.3	+4.6
Luhya	5,338,666	14.2	23,863	11.3	-2.9
Kalenjin	4,976,328	13.3	35,282	16.7	+3.4
Luo	4,044,440	10.8	19,025	9.0	-1.8
Kamba	3,893,157	10.4	20,490	9.7	-0.7
Somali	2,385,572	6.4	19,025	2.7	-3.7
Kisii	2,205,669	5.9	14,287	6.8	+0.9

Ethnic Group	Population (2009 Census)		Number in the Civil Service	Share of Civil Service Jobs (%)	Population Job Share Variance
	Numbers	Share (%)			
Mijikenda	1,960,574	5.2	7,924	3.8	-1.4
Meru	1,658,108	4.4	12,517	5.9	+1.5
Turkana	-	2.6	-	1.0	-1.6
Maasai	841,622	2.2	3,090	1.5	-0.7
Embu	324,092	0.9	4,118	2.0	+1.1
Taita	273,519	0.7	3,074	1.5	+0.8
Bora	161,399	0.4		1.2	+0.8

Source: The Status of Social Cohesion in Kenya, 2013.

34. There has been substantial developmental growth in some areas in Kenya. However, there still exist areas which have been left behind .nainly due to historical injustices. To accelerate development in all parts of Kenya, the Government has adopted various policies, legislative and administrative innovations to remedy the situation. These include:

35. Rolling out of the devolved system of government. The country is now divided into 47 counties, each with its own government and county assembly. Devolution gives Kenyans a greater say in determining the development initiatives in their local areas.

36. The Commission on Revenue Allocation Act 2011 establishes the Commission on Revenue Allocation (CRA) with the overall function of making recommendations concerning the basis for the equitable sharing of revenue raised by the national government between the national and county governments and among the county governments. The CRA facilitates the process of determining the basis of revenue sharing among Kenya's 47 Counties. The basis for revenue-sharing in the financial years 2012-2013, 2013-2014 and 2014-2015 involved the following perimeters and percentage weights: population, 45 per cent; poverty index, 20 per cent; land area, 8 per cent; basic equal share, 25 per cent; and fiscal responsibility: 2 per cent. This formula has enabled the poorest and most marginal Counties to receive the most resources every year. The formula is being reviewed.

37. Additionally, the most marginal counties benefit the most from the Equalisation Fund. This is a Fund established under Article 204 of the Constitution to provide basic services such as water, roads, health facilities and electricity to marginalised areas so as to bring the quality of such services to the level enjoyed by the rest of the nation. In 2011, the CRA identified 14 counties as the most marginalised in the country. According to criteria for identifying marginalised areas for the purposes of the Equalization Fund, Turkana County received the lion's share of the allocation with USD 3,074,305, followed by Mandera with USD 2,824,730, Wajir with USD 2,722,632 and Marsabit with USD 2,586,500. Other marginal counties were Samburu, West Pokot, Tana River, Narok, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu.

38. As Kenya reported in its initial periodic report to the Committee, the Constituencies Development Fund was established in 2003 to channel resources to constituencies for development purposes. The Fund has been highly instrumental in uplifting all constituencies in Kenya in terms of developmental initiatives. While Parliament amended the Constituencies Development Fund through the Constituencies Development Fund Act 2013 in a bid to make it comply with the Constitution, the High Court has recently determined that the Fund is unconstitutional following the 2010 adoption of the Constitution. In *Institute for Social Accountability & Another v. National Assembly & 4 Others (2015) eKLR*, the Court ruled that the Act was invalid in its entirety, but allowed the State a 12-month grace period during which to replace the statute.

5. Encouraging Non-governmental Organisations and institutions that combat racial discrimination and foster mutual understanding

39. The State has reviewed and revitalised the Non-governmental Organisations sector by passing the Public Benefits Act 2013. The Act provides for the establishment and operation of the public benefit organisations sector. The objects and purposes of the Act include: encouraging and supporting public benefit organisations in their contribution to the diverse needs of the people of Kenya including by creating a conducive environment for the growth of the public benefit organisations sector and for the operation of public benefit Organisations. One of the Government's duties in this regard is to provide an enabling environment for public benefit organisations to be established and to operate in a transparent and accountable manner.

40. A number of Constitutional provisions require the State to take specific measures to ensure adequate protection and development of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. As already explained, Article 27 (6) of the Constitution requires the State to take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups because of past discrimination. Article 56 of the Constitution requires the State to put in place affirmative action programmes designed to ensure that minorities and marginalised groups: participate and are represented in governance and other spheres of life; are provided special opportunities in educational and economic fields; are provided special opportunities for access to employment; develop their cultural values, languages and practices; and have reasonable access to water, health services and infrastructure. Similar measures are provided for in respect of children, persons with disabilities, youth and older members of society.

41. The *Vision* 2030, Kenya's development blueprint, recognises that no society can gain social cohesion if significant sections of it lives in abject poverty and has for this reason included equity as a recurrent principle in all its economic, social and political programmes. It underscores the importance of investing in Arid and Semi-Arid Lands (ASAL) districts, communities with high incidence of poverty, unemployed youth, women, and all vulnerable groups. The Vision 2030 further outlines strategies aimed at moving the country towards substantive equality by supporting regions and groups which have been historically disadvantaged.

42. The State continues to put in place specific and concrete measures in the social, economic, cultural and other fields to ensure adequate development and protection of certain racial groups or individuals belonging to them. The Social Assistance Act 2013 establishes the National Social Assistance Authority as well as providing a basis for ensuring that persons in need are provided with social assistance. Groups identified for such assistance include: orphans and vulnerable children; poor elderly persons; unemployed persons; widows and widowers; and persons with disabilities.

43. Affirmative action programmes have been rolled out to cover women, youth and persons with disabilities. The Government has reserved 30 per cent of all government contracts for women, the youth and persons with disabilities. The Government established the Uwezo Fund on 8 September 2013, with an initial budget of approximately USD 67,796,610.00. The objective of the Fund is to expand access to finance through grants and credit to promote youth and women businesses and enterprises at the constituency level, thereby enhancing economic growth towards the realisation of the goals of *Vision* 2030; to generate gainful self-employment for Kenyan youth and women; and to model an alternative framework in funding community driven funding.

44. Finally, over 170,000 poor vulnerable households are benefitting from cash transfer programmes (120,000 households under the Orphans and Vulnerable Children Programme, 33,000 households under the Older Persons Programme and 14,700 persons under the Disability Fund).

C. Article 3: Condemnation of racial segregation and apartheid and undertaking to prevent, prohibit and eradicate such practices

45. The State has never condoned or practised racial segregation. This was only experienced during Kenya's colonisation by Britain, when the country was divided into the so-called "White highlands" where the most fertile land was designated for white settlers while indigenous populations had to live in less endowed "Native reserves". Political governance was also designed in such a way as to give Europeans the most influence in government as compared to African and Asian populations.

46. In its definition of ethnic discrimination, the National Cohesion and Integration Act 2008 provides that a person discriminates against another person if, among other things, the former person treats the latter person on ethnic grounds less favourably than other persons. The Act then provides that segregating a person from others on ethnic grounds amounts to less favourable treatment.

47. The NCIC conducts audits to ascertain the ethnic composition of employees in the public service. In 2011, the NCIC conducted a national ethnic audit as the first step towards tackling complaints about skewed ethnic representation in the public service (Cf: Table I). In 2012, a similar Audit was carried out for public universities and their constituent colleges. Just like in the civil service audit, the study on universities found domination of those institutions by a few ethnic communities. The NCIC held follow-up meetings with university administrations and the Ministry of Higher Education, where it was agreed that a progressive approach be adopted in the next three years to include more minorities in employment. More recently, the NCIC has required errant universities to sign diversity charters.

48. With Devolution, the growth of demands that Counties and institutions based in particular Counties should employ people only from locally dominant ethnic groups has emerged as a challenge to the principle of embracing diversity. The Government realises that even where counties seem predominantly mono ethnic such as in the various Kikuyu counties or in the Luo Nyanza counties, the reality is that ethnically minority populations too live in these counties. Section 65 of the County Government Act therefore has sought to remedy this situation by requiring County Public Service Boards to take account of the need to ensure that at least 30 per cent of vacant entry level posts are filled by candidates who are not from the dominant community, while selecting candidates for appointment. Immense difficulties though attend implementation of this provision. In many instances, applicants from non-local ethnic communities do not apply in big enough numbers to fill the minimum one-third quota.

49. In 2015, the NCIC has released an audit which assesses the ethnic composition of County Public Services. Only 18 counties (38 per cent) have adhered to section 65 of the County Governments Act by giving more than 30 per cent of entry level vacancies to members of non-dominant ethnic groups. 62 per cent of the counties have hired more than 70 per cent of their staff from one ethnic group (Cf: paragraph 22). The NCIC has recommended *inter alia* that County Public Service Boards be required to undertake annual ethnic and diversity audits of their employees.

50. The State has taken specific steps to finally resolve the difficulties which the Nubian and some other communities have experienced in the past while seeking documents to

facilitate their citizenship such as identity documents and passports. Section 15 of the Kenya Citizenship and Immigration Act 2011 provides that:

> A person who does not have an enforceable claim to the citizenship of any recognised State and has been living in Kenya for a continuous period since 12th December, 1963, shall be deemed to have been lawfully resident and may, on application, in the prescribed manner be eligible to be registered as a citizen of Kenya if that person— (a) has adequate knowledge of Kiswahili or a local dialect; (b) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer; (c) intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and (d) the person understands the rights and duties of a citizen.

51. The Department of Immigration has formed a taskforce to analyze data on the Makonde people in Kwale County and the Swahili-Shirazi to determine whether they are eligible for declaration as citizens of Kenya.

52. The use of force to drive targeted communities from certain areas also remains a concern for the State. Inter-ethnic conflicts continue to arise from time to time amongst various pastoralist communities or between pastoralist and agriculturalist communities, by and large driven by limited natural resources such as pasture. During the last four years, inter-communal conflicts have arisen between the Maasai and the Kisii, the Samburu and the Turkana, the Pokot and the Turkana, and the Pokomo and the Orma. Whenever such conflicts have arisen, various State agencies have stepped in to stop the conflicts and tackle the short-term, medium and long-term causes of such conflict. To illustrate State interventions, when the Pokomo and Orma conflict began in the Tana Delta in 2012, the Government sent security forces as well as relief aid to protect as well as provide assistance to the affected communities. The KNCHR undertook an inquiry of the causes and effects of the conflict. KNCHR subsequently made recommendations to the State on how to respond to the issues at stake from a human rights perspective.

D. Article 4: Condemnation of propaganda and organisations based on ideas or theories of racial or ethnic superiority or that justify or promote racial hatred and discrimination and adoption of immediate and positive measures to eradicate incitement to or acts of such discrimination

53. Apart from being a party to ICERD, Kenya is also a party to the International Covenant on Civil and Political Rights which similarly outlaws any propaganda for war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Article 33 of the Constitution, which guarantees every person the right to freedom of expression, limits that right not to extend to propaganda for war, incitement to violence or hate speech. The right also does not extend to advocacy of hatred constituting ethnic incitement, vilification of others or incitement to cause harm; or that is based on any ground of discrimination protected under the Constitution. Electronic, print and other media too may not disseminate this sort of content – Article 34 of the Constitution.

54. This Constitutional provision is enabled by Section 13 of the National Cohesion and Integration Act 2008 which makes it a criminal offense for a person to employ hate speech. This section *inter alia* provides as follows:

> (1) A person who— (a) uses threatening, abusive or insulting words or behaviour, or displays any written material; (b) publishes or distributes written material; (c) presents or directs the public performance of a play; (d) distributes, shows or plays,

a recording of visual images; or (e) provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.

55. In *Chirau Ali Mwakwere v. Robert M. Mabera & 4 Others (2012) eKLR*, the High Court determined that Sections 13, 14 and 62 (1) of the National Cohesion and Integration Act under which the petitioners had been charged do not violate the right to freedom of expression enunciated in Article 33 of the Constitution. The Court stated that because of the deleterious effects of propaganda for war, incitement to violence, hate speech and advocacy for hatred, the State has an interest and indeed an obligation to impose sanctions on such conduct through criminal law. Sections 13 and 62 of the National Cohesion and Integration Act give effect to the State objective to promote ethnic harmony and national cohesion by prohibiting hate speech. This objective is consistent with the national values and principles of the Constitution particularly human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. Section 13 of the Act curtails such freedom of a person who intends to stir up ethnic hatred or having regard to all circumstances, ethnic hatred is likely to be stirred. The statute lays emphasis on the likely effect of the objectionable information and intention of the person delivering it rather than on the content of the objectionable expression. Section 62 on the other hand emphasises the intention to incite feelings of contempt and hatred. It does not refer to expression such as would expose the petitioner to prosecution for merely expressing or voicing concerns about historical injustice and marginalisation.

56. State agencies have used a variety of approaches to deal with hate speech cases. Presently, NCIC and the DPP are prosecuting at least 7 cases involving use of hate speech by politicians and bloggers. Such prosecutions include *R v. Moses Kuria (CMCC No. 904 of 2014)* and *R v. Allan Wadi (Criminal Case No. 1 of 2015)*.

57. The Media Act 2007 establishes the Media Council of Kenya to set media standards and the Complaints Commission to which a person aggrieved by a media organisation may seek redress. The complaints Commission has in the last few years adjudicated complaints on various issues including protecting individuals and groups from hate speech. For example in *Jamia Mosque Committee v. The Kenya Times*, the complainant alleged that an article published in the *Sunday Times* titled "In the name of Allah" was inaccurate, false, biased and misleading and further submitted that it amounted to hate speech against the Muslim community. The commission ordered the respondents to apologise to the complainant within 30 days.

58. The NCIC has also endeavoured to use non-criminal measures to deal with hate speech. It has trained police officers on the use of recording equipment for monitoring hate speech. The trained police investigators have continued to work closely with NCIC and other focal points in various agencies, including cohesion monitors in the different counties. NCIC has also developed media guidelines to be used by the media and other parties when reporting on elections.

59. Notable efforts have also been undertaken by businesses. For example the *Daily Nation* appointed an internal ombudsman who adjudicates concerns raised by consumers on the content and style of the newspaper. Concerns have been raised on the usage of terms that misrepresent groups on the basis of religion, for example the inappropriate use of the terms "Islamist" or "jihadist" which may have the effect of demonizing all Muslims.

E Article 5: Prohibition and elimination of racial discrimination and guarantee of the right of everyone without distinction on the basis of race, colour or national or ethnic origin to equality before the law in the enjoyment of fundamental human rights

1. Right to equal treatment before the tribunals and other organs administering justice

60. Article 27 of the Constitution guarantees everyone equality before the law and the right to equal protection and equal benefit of the law. This guarantee entails the full and equal enjoyment of all rights and fundamental freedoms.

61. The State has faced particular challenges in identifying and dealing with terrorist threats, particularly from the Al Shabaab terror group based in Somalia and the growth of radicalisation in the country. According to the NPS, in 2014, at least 47 incidents of terrorism took place in Kenya, resulting in at least 173 deaths and 179 injuries. 409 suspects were arrested and arraigned before courts of law. Kenya's security forces have on occasion found it necessary to arrest suspected terrorists, whether citizens or non-citizens. Whenever this has happened, though, due process rights of arrested persons have been respected.

62. While the Government continues to take specific policy, legislative, judicial and administrative measures to fight the terrorist threat presently facing the country, all State organs seek to abide by the need to ensure that measures taken do not discriminate, in purpose or effect, on the grounds of race, colour, descent or ethnic origin. In this, the State is guided by Article 24 of the Constitution which provides the manner of considering the constitutionality of a limitation on fundamental rights by requiring that such limitation be reasonable and justifiable in a free and democratic society, and that all relevant factors are taken into account, including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the need to balance the rights and freedoms of an individual against the rights of others, the relation between the limitation and its purpose, and whether there are less restrictive means to achieve the purpose.

63. Investigations of claims of racial discrimination by individuals, is undertaken by various institutions depending on where a complaint has been lodged. As at June 2013, the NCIC had investigated 680 complaints on issues including ethnic, racial and religious discrimination and hate speech. 30 cases had been sent to the DPP for consideration for prosecution, and 20 others were referred for conciliation. Cessation notices were issued on 50 cases. The Commission's approach elicited apologies even from politicians.

64. As of May 2015, KNCHR had received 27 complaints on labour discrimination. The NGEC to date has handled 51 complaints on discrimination based on different grounds and five employment/labour complaints. The National Gender and Equality Commission (NGEC) is in the process of concluding its regulations to make operational its functions and mandates in line with its constitutive Act.

2. The right to security of person and protection by the State against violence or bodily harm

65. Article 29 of the Constitution guarantees every person the right to freedom and security of person, including the right not to be: deprived of freedom arbitrarily or without just cause; detained without trial; subjected to any form of violence from either public or private sources; subjected to physical or psychological torture; subjected to corporal punishment; or treated or punished in a cruel, inhuman or degrading manner. Under Article 25, freedom from torture cannot be limited.

66. The State has adopted policy, legislative, administrative and judicial measures to ensure security of person for all in Kenya. The Counter-Trafficking in Persons Act 2010

inter alia criminalises trafficking in persons, which is punishable by a term of at least 30 years' imprisonment or a fine of USD 333,000 or both. This offense entails the recruitment, transportation, transfer, harbouring or receiving of another person for the purpose of exploitation. The Act also establishes the National Assistance Trust Fund for Victims of Trafficking in Persons. It also establishes the Counter-Trafficking in Persons Advisory Committee whose function is to advise the Government on activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons. The Government launched the Committee in 2014 in a bid to ensure full implementation of the Act.

67. Kenya remains conscious of its onerous responsibility of tackling counter-trafficking in persons who are sourced from, transited through or destined to the country. Kenya is particularly concerned that a number of its citizens, particularly young women, have been recruited by unscrupulous recruitment agencies that have sent them to Middle-Eastern countries where they are forced to work as domestic workers in slave-like conditions.. The Government is in the process of establishing protocols with relevant countries to ensure that Kenyans who go to work in those countries are not exploited. During 2013, the Government identified at least 47 victims of trafficking, prosecuted 30 trafficking cases and convicted seven traffickers.

68. The State is also seeking to counter the recruitment of youth into terrorist groups and has recently issued an amnesty under which individuals who have become members of terrorist groups may not be prosecuted if they give themselves up to the authorities.

69. The State has also established a number of laws to ensure the country's security forces provide effective protection to citizens and residents. The Independent Policing Oversight Authority Act (Cap. 88) establishes IPOA to provide civilian oversight of the police. The National Police Service Act criminalises torture and other cruel, inhuman or degrading treatment or punishment committed by the police, and prescribes heavy sanctions. The Victim Protection Act, 2014 provides a framework for the reparation and compensation of victims of crime and abuse of power.

70. Similarly, Legal Bills have been prepared to protect the rights of persons to dignified treatment and freedom from torture and slavery in line with the Constitution and other international standards. The Prevention of Torture Bill, 2015 seeks to provide a legislative framework for the prevention, prohibition and punishment of acts of torture and other cruel, inhuman or degrading treatment or punishment and the rehabilitation of victims of torture.

71. The Judiciary has also intervened to ensure the right to protection of the person. Since 2010, Courts have made findings in favour of many persons who sought remedies on allegations of torture and ill-treatment. Awards have been made in various cases. For example, In *Alex J Wagunya v. Attorney General (2013) eKLR*, the court awarded the Petitioner a global sum of USD 20,000 for acts of torture. Similarly, in *Gitobu Imanyara & 2 Others v. Attorney General & 2 Others (2013) eKLR*, the court issued general damages totalling USD 77,000 to the petitioners for acts of torture perpetrated by State agencies.

3. Political rights

72. Article 38 of the Constitution guarantees every citizen the freedom to make political choices, including the rights to: form a political party; participate in the activities of a political party; or campaign for a political party or cause. Adult citizens have the rights to be registered as voters and to vote and to stand for and hold public office. The Constitution also makes specific provisions establishing special measures to ensure the effective participation of all groups in political processes. Article 81 of the Constitution provides for fair representation of women and persons with disabilities. The State is in the process of establishing legislation to enable Article 100 of the Constitution which requires it to enact

legislation to promote the representation of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities. Finally, Article 54 of the Constitution places an obligation on the State to ensure the progressive implementation of the principle that at least five percent of the members of elective and appointive bodies are persons with disabilities.

73. Kenya has passed laws to enable these Constitutional provisions. The Political Parties Act, 2011 provides for the registration, regulation and funding of Political Parties. The Independent Electoral and Boundaries Commission Act, 2011 enables establishment of the Independent Electoral and Boundaries Commission (IEBC) which oversees elections in the country in terms of the Elections. The country's Parliament and County Assemblies are constituted in an elaborate manner to ensure representation across gender, representation of persons with disabilities and youth.

74. Positive results from implementation of these constitutional and statutory provisions are phenomenal. Kenya now has over 21 per cent women representation in Parliament, the highest ever in the country's history. Similarly, Kenya's Parliament now includes at least 12 Senators or members of the National Assembly with disabilities as well as at least 35 legislators, from the Youth category. The representation of women though has not reached the minimum constitutional threshold of at least one third, and Kenya is in the process of devising a formula for realising that threshold.

75. Kenya recognises that money can become a disenabler for effective political participation particularly when it is used to peddle political influence. The Election Campaign Financing Act, 2013 therefore provides for the regulation, management, expenditure and accountability of funds during election or referenda campaigns and requires the IEBC to inter alia set campaign finance ceilings. The need for regulation is also based on the fact that Kenya provides political parties with public resources and political parties should use such monies accountably. Indeed, the Political Parties Act which establishes the Political Parties Fund also provides that a political party is not entitled to access the Fund if more than two-thirds of its registered officials are of one gender.

76. The Judiciary too has determined cases to ensure political rights for Kenyans. In *Kituo cha Sheria v. Interim Independent Electoral Commission & 2 Others (2013) eKLR*, the High Court determined that the right to vote is a fundamental right and part of Kenya's system of government. The Constitution, with its emphasis on the values of the rule of law, equity, inclusiveness, equality, human rights as well as the right to vote and the qualification of voters provided under Article 83 does not exclude prisoners from being registered to vote and voting in elections. The State has a positive responsibility to ensure that all the people of Kenya, particularly those who are marginalised or vulnerable, are able to exercise this fundamental right.

77. As it begins to prepare for the 2017 general elections, the IEBC Is seeking to ensure higher voter registration levels particularly in sparsely-populated counties, some of which had extremely low voter registration at the last elections. IEBC figures show that 75 per cent of eligible voters in Mandera County remain unregistered; and that, respectively, eligible unregistered voters in Turkana, Wajir, Garissa, West Pokot and Samburu counties are 75, 70, 64, 60, 55 and 46 per cent respectively.

4. The right to freedom of movement and residence within the State

78. Article 39 of the Constitution guarantees every person the right to freedom of movement. Every person has the right to leave Kenya. As well, every citizen has the right to enter, remain in and reside anywhere in Kenya.

79. These rights are governed by laws which also spell out certain restrictions, particularly with regard to national security, public health and morals or other rights and

freedoms. For example, the Kenya Citizenship and Immigration Act prohibits the entry into Kenya of non-citizens who engage in human trafficking, human smuggling, sexual exploitation and sex crimes.

5. The right to nationality

80. Articles 14, 15 and 16 of the Constitution provide for the right to nationality in Kenya. One can be a citizen by birth or registration and dual citizenship is provided for. Article 53 of the Constitution guarantees every child the right to a name and nationality from birth.

81. The Kenya Citizenship and Immigration Act provides for matters relating to citizenship. It makes provisions in key areas of citizenship and residency. It inter alia provides for citizenship by birth, dual citizenship, and citizenship by presumption for foundlings who are or appear to be less than eight years old, citizenship by marriage, stateless persons, migrants and descendants of stateless persons and migrants. The Kenya Citizens And Foreign Nationals Management Service Act, 2011 establishes the Kenya Citizens and Foreign Nationals Management Service whose overall function is implementation of policies, laws and other matters relating to citizenship and immigration, births and deaths, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register. The establishment of the Service brings together a number of related services for their better management.

82. The State has taken a number of measures to streamline matters of citizenship and to ensure that all deserving persons may exercise citizenship or residency rights. The State is in the process of implementing the Integrated Population Registration System which will be a database of all the details of an individual including information on birth and death, and marriage and citizenship status. As of March 2015, the System had information on 16 million Kenyans and 200,000 refugees. The government expects that once the new registry is set up, all Kenyan nationals, including children, will be issued with electronic national identity cards by October next year. The new Ids are expected to be used universally from 2016.

83. The Government has also proposed the Kenya Diaspora Policy (2014) as one strategy of responding to the positive Constitutional approach to citizens' resident outside Kenya and who sometimes hold dual citizenship. This Policy, which is also one of the pillars of Kenya's Foreign Policy, seeks to mainstream the Kenyan Diaspora into the national development process in line with the aspirations and goals of the Kenya *Vision* 2030 which recognises Diaspora contribution as a major enabler to the growth of the economy and critical factor in the achievement of the country's overarching vision of a globally competitive and prosperous Kenya by the year 2030. The Kenyan Diaspora has been lobbying strongly for Kenya to put in place measures to enable them to exercise their right to vote; and key State institutions such as the IEBC are reviewing available options, one such option being voting by mail.

6. The right to marriage and choice of spouse

84. Article 45 of the Constitution guarantees every adult the right to marry a person of the opposite sex, based on the free consent of the parties. A couple has equal rights at the time of the marriage, during marriage and at its dissolution.

85. The Marriage Act, 2014 amends and consolidates the various laws relating to marriage and divorce to bring them in line with the Constitution. It legislates for monogamous and polygamous marriages which in every instance must be registered. The Act legislates for civil marriages as well as marriages under Christian, Customary, Hindu or

Islamic traditions. Potentially polygamous marriages may be converted to monogamous marriages with the mutual agreement of both spouses.

7. The right to own property and the right to inherit

86. Article 40 of the Constitution guarantees every person the right to acquire and own property of any type anywhere in Kenya. This provision has particular significance in ensuring that a person from one community is not stopped from acquiring or owning property within territory which historically may have belonged to another community.

87. The Government has consistently emphasised that no Kenyan may be excluded from owning property or working in a particular geographical part of the country merely on the basis that they were not born there or their community does not reside there. However, the National Policy and Action Plan on Human Rights recognises that historical injustices have undermined land use by certain communities. One of the Policy's priority actions is that the State shall take measures to ensure the protection of ancestral land and other rights of these communities in line with the national land policy.

88. The Land Act, 2012 is the key statutory instrument that has been established to regulate the land sector. Land tenures recognised under the Act are freehold, leasehold, and various forms of partial interest and customary land rights consistent with the Constitution. Section 6 (2) of the Act provides that:

> There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.

89. The functions of the Land Commission, which is established by the National Land Commission Act, 2012, include managing public land on behalf of the national and county governments. Regulations have not been operationalised in respect of this legislation, as a consequence of which teething problems remain in delineating the mandate of the Commission and the Land Cabinet Secretary.

90. The Ministry of Land, Housing and Urban Development has issued 515,989 title deeds in 35 counties in Kenya including: Taita Taveta, Narok, Bomet, Kilifi, Kericho and Kitui.

91. The courts have affirmed that women too have the right to inherit their parents' property alongside their male siblings. In *Zipporah Gaiti v. Samson Rukunga (2011) eKLR*, the High Court held that the marital status of a deceased's daughter is not a basis to deny her right to inherit her deceased father's estate. In *Monica Jesang Katam v. Jackson Chepkwony & Another (2011) eKLR*, the High Court decided that property can devolve to a widow in a woman-to-woman marriage.

92. The Matrimonial Property Act, 2013 establishes significant gains in securing women's access to matrimonial property during and after the marriage. It protects property acquired during the existence of a marriage from being disposed of by one party without the consent of the other party.

8. The right to freedom of thought, conscience and religion

93. Article 8 of the Constitution provides that there shall be no State religion. Article 32 of the Constitution guarantees every person the right to freedom of conscience, religion, thought, belief and opinion, and the right to manifest any religion or belief through worship, teaching or observance. A person may neither be denied access to an institution, employment, facility or the enjoyment of a right on account of religion or belief, nor may one be compelled to act contrary to their belief or religion.

94. When Kenyans were formulating the 2010 Constitution, they recognised the importance of including provisions to ensure Kenyan Muslims could exercise their right to freedom of religion fully while at the same time exercising their fundamental human rights. Article 24 of the Constitution consequently provides that provision on equality:

> ... shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

95. In addition, Article 170 of the Constitution establishes the Kadhis' Courts whose jurisdiction is limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis' courts. The question of both parties submitting to the jurisdiction of the Kadhis' Court is important because it protects a party where he or she feels that submitting to the Kadhis' Court jurisdiction may undermine their rights.

96. Ensuring guarantee of the right to freedom of conscience, religion, thought or opinion to every person raises particular challenges for the State. An extremely high number of religious faiths and denominations operate in the country. Some of these entities have used religion to defraud unsuspecting worshipers of their money or indeed to peddle antisocial and even illegal causes such as stopping their faithful from seeking treatment in hospitals or encouraging extremism and radicalisation. Consequently, the Government is in the process of drawing up guidelines to regulate religious organisations and their activities. The Government has consulted relevant stakeholders as it prepares the regulations. Regulations under consideration include requiring religious groups to file annual returns including audited accounts.

97. A further challenge relates to the fact that students from more diverse religious backgrounds are demanding that schools allow them to observe their faiths in a manner that sometimes is not compatible with overall education policy; and a number of judicial cases have been lodged where parents or guardians have felt that their children's rights have been being violated. In *Republic v. The Head Teacher, Kenya High School and Another Ex-parte SMY (a minor suing through her mother and next friend A B) (2012) eKLR*, the High Court was called upon to determine whether the respondents' decision refusing the applicant and other Muslim students the right to wear a *hijab* while in school violated any of their Constitutional rights. In finding that the applicant's rights under Article 27 of the Constitution had not been violated, the Court determined that the respondents' limitation of the applicant's right to outwardly manifest her religion by wearing a *hijab* in school was reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The uniform school policy was designed by the respondents with the legitimate aim of ensuring equality among all students and to facilitate enforcement of discipline for continued improvement of academic standards in the school. While every person has a right under Article 32 of the Constitution to freedom of conscience, religion, thought, belief and opinion and the right to manifest their religious beliefs through worship and practice, this right is not absolute and can be qualified under Article 24 of the Constitution.

98. In *Seventh Day Adventist Church (East Africa) Limited v. the Minister for Education (Petition No. 431 of 2012)*, the High Court also recognised the importance of balancing the right to freedom of religion and the right to education by requiring the Ministry of Education to promulgate appropriate regulations prescribing the obligations of public schools to respect the rights of students under Article 32 of the Constitution and Section 26 of the Education Act, describing the manner in which the obligations are to be implemented and secured as well as setting up an administrative enforcement and complaints mechanism.

9. The right to freedom of opinion and expression

99. Article 33 of the Constitution guarantees every person the right to freedom of expression, including the freedoms to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. This right is fortified by Article 34 of the Constitution which guarantees freedom and independence of electronic, print and other media. The right of every citizen to access information is guaranteed under Article 35 of the Constitution. Every citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. Article 35 (3) requires the Government to publish and publicise any important information affecting the nation. Article 35 will be enabled once the Access to Information and the Data Protection Bills, 2015 are legislated.

100. The National Cohesion and Integration Commission has facilitated development of Media Guidelines on Hate Speech including by engaging various media stakeholders. These Guidelines consolidated and simplified the laws relating to media and hate speech. The Government wishes to highlight two positive outcomes of the development of these Guidelines. First, in the lead-up to the 2013 general elections, various print and electronic media outlets published specific guidelines on the sort of advertorial content that would not be accepted for broadcast or print. As a consequence, inflammatory advertisements were not aired on television or radio or printed in newspapers. Second, the 2013 general elections, unlike those of 2007, saw no hate speech or incitement disseminated by the media or by politicians in campaign rallies.

101. The State continues to have particular concerns regarding the fact that social media platforms have increasingly been used to spread hate speech and incitement to hatred. Individuals have been prosecuted for matter they disseminated on platforms such as Face book, Twitter and even text messages sent via mobile phones (cf: paragraph 58).

10. The right to freedom of peaceful assembly and association

102. Article 36 of the Constitution guarantees every person the right to freedom of association, including the right to form, join or participate in the activities of an association of any kind and not to be compelled to join an association. Article 37 of the Constitution guarantees every person the right to assemble, demonstrate, picket and present petitions to public authorities.

103. No person or group of persons are stopped from assembling or associating on the basis of their race or ethnicity. Any limitations that the State has applied are in conformity with Article 24 of the Constitution which establishes the extent and nature of limitations to fundamental human rights. Kenya has approximately 50 political parties and 6,500 non-governmental organisations.

11. Rights to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, and just and favourable remuneration

104. Article 30 of the Constitution protects persons from being held in slavery or servitude or being required to perform forced labour. Article 41 guarantees every worker the rights to: fair remuneration; reasonable working conditions; form, join or participate in trade union programmes; and go on strike.

105. The National Cohesion and Integration Act outlaws employment discrimination in all public establishments (Section 7). Outlawed acts include discrimination in the process of hiring; terms of employment or denial of employment; discrimination of employees; or harassment of an employee or applicant. The Employment Act, 2007 protects persons from

discrimination in the employment sphere. It prohibits discrimination in employment in relation to promotion of equality of opportunity in employment; elimination of discrimination in any employment policy or practice, including against prospective employees based on their race, colour, sex, ethnic origin, HIV status, disability or pregnancy; and the payment of equal remuneration for work of equal value. The Act further mandates the Minister for Labour, Social Security and Services to promote and guarantee equality of opportunities in employment for all persons including migrant workers and members of their families who are lawfully in the country. The Commission for University Education has for example established appointment and promotion guidelines to ensure that individuals may work in any university regardless of their ethnic background. The Government has thus expressed its great concern by attempts in certain universities to demand the appointment or promotion of staff from only certain ethnic communities. The HIV and AIDS Prevention and Control Act, also prohibits discrimination in employment. Further to this the Persons with Disabilities Act prohibits discrimination of persons with disabilities in employment.

12. The right to form and join trade unions

106. Article 41 of the Constitution guarantees every person the right to fair labour practices. As already stated, Article 41 also guarantees every worker the rights to: fair remuneration; reasonable working conditions; form, join or participate in trade union programmes; and go on strike. Trade unions have the rights to determine their administration, programmes and activities; to organize; and to engage in collective bargaining.

107. Persons from particular racial or ethnic communities or non-citizens are not forbidden to join trade unions and participate in their activities. The key limitation applicable to trade union rights is in Article 24 of the Constitution which allows provisions in legislation to limit the application of specified rights or fundamental freedoms to persons serving in the Kenya Defence Forces or the National Police Service. Yet even in this instance courts have been quick to protect the trade union rights of police officers. In *Nicky Njuguna and 3 Others (2013) eKLR*, in an appeal challenging the refusal by the Registrar of Trade Unions to register the Kenya Police Union, the Industrial Court of Kenya determined among other things that Article 24 (2) (b) of the Constitution establishes certain requirements which must be satisfied before a limitation can become valid. A legislative provision limiting a right or fundamental freedom shall not be construed as limiting such right or freedom unless the provision is clear and specific about the right or freedom being limited and the nature and extent of such limitation. The Court held that Section 3 (b) of the Labour Relations Act which provides that the Act shall not apply to any person in respect of their employment or service in the Kenya Police offends Article 24 (2) (b) because it completely denies rather than limits the rights of officers in the National Police Service the right to form, join or participate in the activities of a trade union which is established in Article 41 (2) (c) of the Constitution. The Court also found that the complete denial of the right to all cadres of officers is unreasonable and unjustifiable in an open and democratic society.

13. The right to housing

108. Article 43 of the Constitution guarantees every person the right to accessible and adequate housing, and to reasonable standards of sanitation. While this right is to be realised on a progressive basis, the minimum core content of the right which should apply immediately has not been determined in policy or law. However, since the Constitution of Kenya, 2010, individuals are boldly relying on the constitutional provisions on the right to adequate housing in order to assert their fundamental rights and to seek redress for any

violations. The response of the courts has so far has been to unequivocally acknowledge the justiciability of economic and social rights.

109. For example, in *Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 3 Others (2013) eKLR*, the High Court found that there was a clear violation of the petitioners' rights to adequate housing by the respondents who undertook forced evictions in a reckless manner and without following the UN Guidelines on forced evictions at the very minimum. The evidence on record showed that the 1st Respondent, through use of means like constructive eviction, absence of participation and absence of a resettlement plan, forcibly intended to evict the petitioners from their houses. Remedies provided by the Court included that: the Attorney General within 90 days file an affidavit detailing existing or planned State policies and legal framework on forced evictions and demolitions in Kenya generally and whether they are in line with acceptable International standards; and that the Attorney General file a further affidavit detailing the measures put in place towards the realisation of the right to accessible and adequate housing and to reasonable sanitation in Kenya.

110. Demand continues to outstrip supply of housing in the country and clearly poorer sections of society are less able to afford housing. Homeless persons are estimated to be 0.05 per cent nationally, comprising 85 per cent male and 15 per cent female. The population living in informal settlements in Nairobi is 36.5 per cent (54 per cent male and 46 per cent female). In Mombasa, 23 per cent of the population lives in informal settlements. In Kisumu, the number is higher with 56 per cent living in informal settlements, 51 per cent of which is male and 49 per cent female.

111. The State is committed to address the high cost of housing and its subsequent implications on socioeconomic development. The policy framework for enabling the right to housing is established in Medium Term Plan II of the Kenya *Vision* 2030. The Vision includes a number of flagship projects such as: production of 200,000 housing units annually under Public Private Partnerships; installation of physical and social infrastructure in informal settlements in 20 Urban Areas; enactment of a housing law; and legislation for a One-Stop Housing Development Approvals Mechanism.

112. The Kenya Informal Settlement Improvement Programme (KISIP) 2011-2016 has been introduced through a partnership between the Kenya Government and the World Bank to undertake tenure regularisation and installation of social and physical infrastructure in selected informal settlements and planning for urban growth in 15 municipalities. A National Youth Service initiative has expedited slum upgrading works, including sanitised ablution facilities, road networks and street lighting initiatives in informal settlements such as Kibera.

14. The right to public health, medical care, social security and social services

113. Article 43 of the Constitution guarantees every person the right to the highest attainable standard of health, including the right to health care services. A person may not be denied emergency medical treatment. Corresponding guarantees of the right to health are established for children in Article 53 (1) (c); for minorities and marginalised groups in Article 56 (e); and for consumers in Article 46 (c). Attendant to the right to health is the right to a clean and healthy environment under Article 42 of the Constitution which also includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.

114. The State is in the process of legislating on various health-related issues. The Health Bill aims to consolidate the laws relating to health; provide for regulation of health care services and health care service providers; provide for establishment of national regulatory institutions; coordinate the inter relationship between the national and county health

institutions; establish a coordinating agency of professionals within the health industry; and provide for attainment of the basic right to health.

115. The Reproductive Healthcare Bill seeks to recognise reproductive rights, set the standards of reproductive health and provide for the right to make decisions regarding reproduction free from discrimination, coercion and violence.

116. The State is taking a number of administrative measures to ensure realisation of this right. It is taking action to secure health services through the integration, training and certification of traditional birth attendants and community health workers. It has also put in place the innovative Output-Based Aid Voucher system intended to contribute to reduction in both maternal and infant mortality rates by improving access to and utilisation of reproductive health services by economically disadvantaged populations. The programme has been piloted in three rural districts (Kisumu, Kiambu and Kitui) and in two urban sites in Nairobi (Viwandani and Korogocho). Plans are under way to scale-up the initiative to other counties. Since its inception, the programme has reached 51 per cent of poor pregnant women in the pilot sites, an indication that the programme has registered success in increasing the proportion of institutional deliveries with a skilled birth attendant. In 2013, the Government introduced a waiver of maternity fees in all public hospitals, a measure that should play a significant role in reducing maternal mortality rates. Currently, the National Gender and Equality Commission is conducting an audit of the free maternity directive issued by the government to evaluate its effectiveness.

117. Despite the Government's efforts, inequities remain in the provision of health-care services. The 2013 Kenya Household Health Expenditure and Utilisation Survey for example shows that on average Kenyans in the richest wealth quintile compared with those in the poorest wealth quintile were more likely to consult a health service provider when ill – 89 per cent of the former to 86 per cent of the latter. The Survey also found that richer counties such as Kajiado, Nairobi, Mombasa and Kirinyaga spent more on outpatient care at USD 20 than poorer counties such as Turkana and Siaya which spent an average of USD 5 per person. The State continues to take measures to remedy this situation. The Government is implementing plans to scale-up health insurance coverage inter alia using the National Hospital Insurance Fund. The Government also recognises that overall maternal health indicators will not improve significantly until previously marginalised areas and informal settlements are targeted specifically.

118. At the County level, Kisumu County has drafted a number of Bills on health including the Maternal Mortality Bill and the Health Bill. A remaining challenge is the sharing of health delivery responsibilities between the National and County Governments.

119. Courts have started to enforce the right to health in innovative ways. In *P.A.O. & 2 others v. Attorney General (2012) eKLR*, the High Court determined that Sections 2, 32 and 34 of the Anti-counterfeit Act 2008 threatened to violate the right to life of the petitioners, their right to human dignity and their right to the highest attainable standard of health. Any legislative measure that would affect accessibility and availability of ARV medicines would ipso facto threaten the lives and health of the petitioners and others infected with HIV and Aids, and would be in violation of their rights under the Constitution. While intellectual property rights should be protected, where there is the likelihood that their protection will put in jeopardy fundamental rights such as the right to life of others, they must give way to the fundamental rights of citizens.

120. Regarding social security, Article 43 of the Constitution requires the State to provide appropriate social security to persons unable to support themselves and their dependants. The National Social Security Fund Act, 2013 establishes the National Social Security Fund as the vanguard for the State's renewed initiative to ensure universal social security coverage. The functions of the Fund include: providing basic social security for its

members and their dependants; increasing membership coverage; improving adequacy of benefits paid; and enabling self-employed persons to access social security for themselves and their dependants.

121. The Ministry of Labour, Social Security and Services has put in place legislative, policy and administrative measures to ensure social security and services to all persons without discrimination. The National Social Protection Bill has been developed and it seeks to provide for the establishment of a Social Protection Council to oversee implementation of social protection programmes. The Ministry has also developed a National Social Protection Policy (Sessional Paper No. 2 of 2014) that provides measures and interventions to protect people against vulnerabilities and to ensure decent living standards. Cash transfer programmes are carried out regularly to vulnerable persons: old (164,000 households), orphaned and vulnerable children (253,000 households) and persons with severe disabilities (27,000 households). To avoid discrimination, beneficiary households are identified through a process involving community structures and validation to verify data and to ensure all eligible individuals benefit. The purchasing power of beneficiaries has been enhanced, and they have had increased savings and investments.

15. The right to education and training

122. Article 43 of the Constitution guarantees every person the right to education. Children have the right to free and compulsory basic education – Article 53. Persons with disabilities have the right to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person – Article 54. Article 55 requires the State to take measures, including affirmative action programmes, to ensure that the youth access relevant education and training. Finally, Article 56 (b) provides that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups are provided special opportunities in educational and economic fields.

123. The Basic Education Act, inter alia, gives effect to Article 53 of the Constitution and other constitutional provisions on education, to promote free and compulsory basic education and to establish an education institutional framework including the National Education Board and County Education Boards. The Act requires the Education Cabinet Secretary to provide for the establishment of: pre-primary, primary and secondary schools, mobile schools and adult and continuing education centres, within reasonably accessible distances; appropriate boarding primary schools in Arid and Semi Arid areas (ASALs); academic centres to cater for gifted and talented learners; and special and integrated schools for learners with disabilities. The Cabinet Secretary is required to provide special needs education in special schools or in other schools suitable to the needs of pupils requiring special education. Primary education is compulsory and it is a criminal offence for a parent not to accordingly take their child to school.

124. Another important statute legislated during the reporting period is the Universities Act, 2012 whose purpose is the development of university education, the establishment, accreditation and governance of universities, establishment of the Commission for University Education, the Universities Funding Board and the Kenya Universities and Colleges Central Placement Service Board. The Placement Board is responsible for, *inter alia*, coordinating the placement of government sponsored students to universities and colleges. The Act provides that in the performance of its duties, the Placement Board shall promote equity and access to University and college education by developing criteria for affirmative action for the marginalised, minorities and persons with disabilities.

125. Under Medium Term Plan II, the State's policy priorities include actualising the right to free and compulsory basic education; enhancing quality and relevance of education and training; enhancing post-basic education; and enhancing education in ASALs. Towards

this end, the State has adopted Sessional Paper No. 14 of 2012 on "A Policy Framework for Education and Training on Reforming Education and Training in Kenya". The Policy proposes reforms that cut across the entire education sector and include policies and strategies for addressing institutional reforms, management and financing of education, the curriculum, teacher education, teacher development and management, and strategies for bringing digital technology within the reach of every Kenyan child.

126. Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands has committed the State to the introduction of flexible education systems of high quality which are responsive to the needs of the area and which reinforce traditional knowledge systems in pastoral societies; promote the use of appropriate information and communication technology and other technologies in service delivery; revise the Education Act to incorporate alternative ways of providing education services to nomadic communities such as distance and mobile education and establish the National Council on Nomadic Education. Interventions under this Policy include: improving infrastructure for education and training at all levels including the tertiary level; increasing the number of trained professionals and developing a mechanism to attract and retain high calibre officers; introducing affirmative action programmes for people from arid areas especially women to all public institutions; targeting a percentage of bursaries for students from arid areas who wish to pursue tertiary and university education; and expanding adult literacy levels and using education to reduce inequalities experienced by certain social groups.

127. Administrative measures continue to be implemented towards full attainment of this right. The State is committed to enhancing access to education as the key to empowering the most marginalised and vulnerable individuals in society. Marginalised individuals like the girl-child, pastoralists and persons with disabilities also tend to have the least opportunities of acquiring an education; and the State continues to make conscious and concerted efforts on an affirmative basis to enable these individuals to best exploit their life-chances alongside their other Kenyan peers through primary, secondary and tertiary education. Investment in Free primary education (FPE) and Free Day Secondary Education has remained a priority, coming among the top five recipients of public expenditure in the last five years. Since the introduction of FPE, enrolment has improved dramatically.

128. The Government continues to implement affirmative action on school admission (using a quota system) for children from ASALs. The Quota system of selection was launched on 11 January 2011. The quota system for national schools involves a formula in which the total number of pupils in a district is divided by that of the entire country and then multiplied by the vacancies available. The figure arrived at represents the national school slots available for each district with the final selection based on the public-private school ratio. The move was meant to address concerns that pupils from public schools who are presumed to be disadvantaged in terms of education facilities and social background lose out to pupils from private schools who have better facilities and learning atmosphere. The Kenya Private Schools Association has opposed this criterion arguing that it is discriminatory; but the High Court has determined that this discrimination is justifiable (Cf: paragraph 16).

129. The Government has made tremendous progress in providing universal access to education. However, there has been concern on the quality of education. To improve the quality of education and ease the financial burden on many households with school going children, the allocation for free tuition in secondary schools has been increased by 33 percent to USD 313 million in the 2014/ 2015 fiscal budget. Allocation for FPE has also been increased by the same percentage to USD 150 million. This is a major step towards ensuring that primary schooling and secondary education is truly free within the next three years.

130. During the current financial year 2016/2016, the Government has provided USD 25 million for the school feeding programme and USD 4 million for sanitary towels to ensure that no child misses out on school due to poverty. The Njaa Marufuku (No Hunger) Project is being spearheaded in schools in the ASALs.

131. To further improve the quality and accessibility of education to all school going children, a comprehensive e-learning programme remains a priority. Towards this end, a total of USD 193 million has been set aside for e-learning, including laptops for children, building capacity of teachers and rolling out computer laboratories for classes 4 to 8 in all public schools throughout the country.

132. The Revision of Bursary Rules has seen County governments increase the amounts given to needy students to USD 50 for day scholars and USD 100 for boarders.

133. The government faces a challenge in ensuring the safety of teachers in far flung areas including the North Eastern part of Kenya which has been targeted on several occasions by terrorist groups.

16. The right to equal participation in cultural activities

134. The Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation – Article 11. It requires the State to promote all forms of national and cultural expressions through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage. Article 44 of the Constitution guarantees every person the right to use the language and to participate in the cultural life of the person's choice. A person belonging to a cultural or linguistic community has the right in communion with the rest of the community to enjoy his culture and use his language; and to form, join and maintain cultural and linguistic associations. A person may not be compelled to perform, observe or undergo any cultural practice or rite.

135. Kenya's various communities perform distinct rites of passage which from time to time have been used notably in social media to engender inter-communal dissension. The State has in particular endeavoured to discourage hate speech which has presented members from certain communities as inferior or not fit to assume political leadership on the mere basis that they do not perform circumcision as a rite of passage for their males. Further, the Prohibition of female genital Mutilation Act, 2011 prohibits female genital mutilation and creates various offences against crimes of female genital mutilation.

136. Inter-communal expressions of culture are shared during schools drama and music festivals which take place annually. Local language broadcasts are aired by the public broadcaster, Kenya Broadcasting Corporation, as well as by private broadcasters like Citizen Radio. In the last four years, local language television stations have also began to operate. State occasions such as Madaraka Day and Jamhuri Day are graced by cultural dances from across the country.

17. The right of access to any place or service intended for use by the general public

137. Article 54 of the Constitution guarantees every person with disability the right to reasonable access to all places, public transport and information. In some instances, some regulations have had the effect of denying certain persons access to places or services. When the Government sought to regulate the public transport industry, it quickly realised that its rearrangement of bus stops for public transport vehicles made it inconvenient for commuters with disabilities who could not walk for long. As already explained in paragraph 31 of this Report, the Judiciary has dealt firmly with private bodies which have excluded persons on the basis of their identity from certain services.

F. Article 6: Effective protection and remedies against racial discrimination through national tribunals and other state institutions and the right to seek just and adequate reparation or satisfaction for damage suffered from such discrimination

1. Statutory and institutional framework

138. Article 48 of the Constitution requires the State to ensure access to justice for all persons and this shall not be impeded by unreasonable fees. Furthermore, Article 47 guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The State is committed to the establishment of an institutional and legislative framework for the provision of affordable legal aid and awareness services for all. The Legal Aid Bill and the National Legal Aid Policy have already been prepared. The National Legal Aid and Awareness Programme has for some time now been implemented on a pilot basis. To date, the pilot project has been launched in Nairobi, Nakuru, Eldoret, Mombasa and Kisumu. The Government will roll out the Programme countrywide once relevant legislation is in place.

139. The Judiciary offers the key framework of tribunals for dealing with racial discrimination but it is supported by a series of quasi-judicial institutions. The Constitution establishes a hierarchy of courts, including the Supreme Court, Court of Appeal and High Court as well as Magistrates Courts. These courts entertain various levels of criminal jurisdiction including in relation to crimes prosecutable in pursuance of the Convention's provisions. The High Court has original unlimited jurisdiction in criminal and civil matters, while criminal matters may be appealed to the Court of Appeal and in some instances further to the Supreme Court.

140. The Constitution and statutes also establish the KNCHR, the NGEC and the Commission on Administrative Justice (CAJ), to which every person has the right to complain alleging denial, violation, infringement of or threat to a right or fundamental freedom. These Commissions promote the protection and observance of human rights and equality and non-discrimination in public and private institutions; monitor and investigate the observance of human rights in all spheres , the abuse of power within the public sector; and receive and investigate alleged complaints of human rights and equality and non-discrimination in all spheres and maladministration in the public service. These Commissions' powers include compensation and other remedies.

141. The KNCHR is an autonomous national Human rights institution established under article 59 of the Constitution and enabled by the Kenya National Commission on Human Rights Act, 2011 with the core mandate of furthering the promotion and protection of human rights in Kenya. The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor compliance of human rights norms and standards, to conduct human rights education, to facilitate training, campaigns and advocacy on human rights as well as collaborate with other stakeholders in Kenya. KNCHR also conducts public education aimed at informing indigenous groups of their rights while engaging the government on its obligations. As we have already explained, the KNCHR was one of the petitioners in the Security Laws (Amendment) Act Petition and the High Court upheld KNCHR's contentions that capping the number of refugees in the country to a maximum 150,000 would violate international law as well as the rights of refugees.

142. The NGEC is a Constitutional Commission operationalised by the National Gender and Equality Commission Act, 2011 as one of the successor commissions to the Kenya National Human Rights and Equality Commission pursuant to Article 59 of the Constitution. The key goal of NGEC is to contribute to the reduction of gender inequalities and the discrimination against all: women, men, persons with disabilities, the youth,

children, older persons, minorities and marginalised communities. NGEC has severally sought to ensure protection and effective remedies against racial discrimination by prosecuting cases to remedy violations. The NGEC acted as *amicus curiae* in *Seventh Day Adventist Church (East Africa) Limited v. the Minister for Education (Petition No. 431 of 2012)* in which the High Court required the Ministry of Education to provide necessary guidance for ensuring schools respect the rights of pupils to exercise their right to freedom of religion. The NGEC also sought judicial intervention to ensure that persons with disabilities and other marginalised groups would gain effective representation in Parliament following the 2013 general elections. In the *National Gender and Equality Commission v. the Independent Boundaries and Electoral Commission, Petition 147 of 2013 (unreported)*, the High Court at the behest of the NGEC determined among other things that The IEBC failed to meet its obligation to conduct and supervise the conduct of elections for special seats under Article 90 by not publicising the party lists submitted to it. The IEBC also failed to issue sufficient guidelines consistent with its obligation to observe, respect, protect, promote and fulfil the rights of persons identified as vulnerable and marginalised to participate in the political process. The Court required IEBC to liaise with other Commissions to resolve the situation.

143. The CAJ is an independent commission established by the Commission on Administrative Justice Act, 2011 pursuant to Article 59 (4) of the Constitution. The CAJ is mandated to address all forms of maladministration and promote good governance and efficient service delivery in the public sector by enforcing the right to fair administrative action. CAJ investigates abuse of power, manifest injustice and unlawful, oppressive, unfair or unresponsive official conduct.

144. A number of other statutory institutions have mandates to ensure effective protection against racial discrimination. The NCIC has been established as Kenya's specific statutory response to ethnic-based discrimination. Relevant functions of the Commission include: investigating complaints of ethnic or racial discrimination and making recommendations to the Attorney-General, the KNCHR or any other relevant authority on remedial measures where such complaints are valid; investigating on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations; and promoting arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace. The NCIC seeks to ensure effectiveness of remedies throughout the country by participating in the Integrated Public Complaints Referral Mechanism (IPCRM). IPCRM is an e-based system that enables members of the public to lodge complaints on discrimination, hate speech, corruption, administrative injustice and human rights violations. Apart from the NCIC, other IPCRM partners are the Ethics and Anti-Corruption Commission, KNCHR, CAJ, National Anti-Corruption Campaign Steering Committee and Transparency International Kenya Chapter. Finally, the HIV AIDS Tribunal, established under the HIV and AIDS Prevention and Control Act 2006, came into force in 2011 and by 2012; it had received 400 complaints, admitted 14 and delivered two judgments.

2. Effectiveness of remedies

145. The Constitution guarantees that available remedies should also amount to effective remedies. Article 159 establishes principles to guide courts and tribunals while exercising their judicial authority. In particular, they are enjoined to ensure that: Justice is done to all irrespective of status; Justice is not delayed; Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms are promoted; Justice is administered without undue regard to procedural technicalities; and the purpose and principles of the Constitution are protected and promoted.

146. In the same vein Article 20 of the Constitution further enjoins courts or tribunals, while interpreting the Bill of Rights, to promote: the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and the spirit, purport and objects of the Bill of Rights.

147. The State continues to undertake Judiciary and justice sector transformation through the expansion of infrastructure to reach parts of the country which received minimal judicial services in the past. In the period 2012-2013, new courts were built bringing the total number of High Courts to 16 and the number of Magistrates Courts to 111, the National Council for the Administration of Justice was revitalised, and the Court Users Committees became more influential.

3. Article 14 Optional Declaration

148. The Constitution and the Treaty Making and Ratification Act have introduced an elaborate process for the ratification of regional and international instruments, which include deeper analysis, public participation and parliamentary consent. Kenya is in the process of analysing all human rights instruments which have not yet been ratified with a view to determining which ones to accept. Kenya will therefore in due course communicate to the Committee its decision on whether it will make the Article 14 Declaration.

G. Article 7: Adoption of immediate and effective measures in the fields of teaching, education, culture and information for combating prejudices that lead to racial discrimination

1. Promotion of understanding, tolerance and friendship among nations and racial and ethnical groups

149. Kenya believes that education plays critical roles in combating prejudice. A baseline survey on Ethnic Interaction and Tolerance undertaken by the NCIC in 2012 showed that up to 57 per cent of Kenyans interacted with people from different ethnic communities, and that the frequency of interethnic interaction increased with the level of education.

150. One of the functions of the NCIC is promoting tolerance, understanding and acceptance of diversity in all aspects of national life and encouraging full participation by all ethnic communities in the social, economic, cultural and political life of other communities. The NCIC is further required to plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups.

151. The NCIC has worked with the Kenya Institute of Curriculum Development to promote national cohesion and integration by infusing those tenets in primary and secondary school curricula. The NCIC was the thematic sponsor of the 53rd Annual Kenya Schools and Colleges National Drama Festival held in 2012 whose theme was "National Cohesion, Integration and Reconciliation". The Commission also sponsored the 54th Festival held in 2013, whose theme was "Performance for National Healing and Reconciliation". The Commission has also encouraged inter-ethnic dialogue particularly covering regions of the country which are prone to inter-ethnic conflict. The NCIC for example sponsored the Loiyangalani Cultural Festival in Turkana County. This County is prone to inter-ethnic and inter-clan conflict over pasture and livestock. This Festival, involving contributions from ten ethnic communities, gave participants opportunities for cross-cultural interaction, cooperation and exchange. NCIC carries out research on coded language and stereotypes used by specific communities to discriminate against others. Finally, the NCIC has worked with the Ministry of Education to establish Amani (peace)

Clubs to enhance cohesion and integration among school-going children and there are 300 such clubs in schools.

152. Most recently, the NCIC has been facilitating dialogue amongst professionals of communities from Kenya's northern region which undertake inter-communal cattle raids. It is working with an initiative called Northern Peace Caravan which is implementing activities to discourage interethnic conflict for resources.

153. The Ministry of Education, Science and Technology has expanded the number of national secondary schools which admit students from across the country and it has facilitated increased admission of students from other counties to county schools. The Ministry ensures that students from marginal districts can also attend national schools by implementing a system which uses a level of affirmative action alongside considerations of merit. The Ministry has set up a committee to vet and approve set books and plays that will be examined. The National Museums of Kenya has prepared several publications to educate Kenyans on diverse cultures.

2. Propagation of the purposes and principles of relevant human rights instruments

154. The application of the Convention is founded on Article 2 (6) of the Constitution which provides that treaties and conventions ratified by Kenya form part of its laws. Courts now accept this position wholly. For example, in *Muigai v. John Bosco Mina Kariuki & Jerioth Wangechi Muigai (2014) eKLR*, the Court of Appeal relied on international instruments that prohibit discrimination against women, stating that the yoke and burden of discrimination should not be worn by the female gender any more. Under the Constitution, the general rules of international law form part of the Laws of Kenya. Further, Kenya continually amends its laws to be in line with ratified International treaties. Kenya is currently in the process of reviewing the Persons with Disabilities Act to align it to the Convention on the Rights of Persons with Disabilities.

Annexure

Responses to the concluding observations of the Committee on Elimination of Racial Discrimination made to Kenya for the initial-fourth periodic reports to the Committee

1. Imposing sanctions for acts of racial discrimination; and outlawing racial discrimination including in employment and housing

The government is reviewing the National Cohesion and Integration Act to include more sanctions for acts of racial discrimination and a number of new criminal penalties will be created. The Act already outlaws discrimination on the basis of employment.

2. Raising awareness among the population about the legal prohibition of racial discrimination and about their right to equality and non-discrimination

The Kenya National Integrated Civic Education Programme was undertaken from 2012-2013 by the Government in partnership with non-state actors to provide civic education to Kenyans on the Constitution with the broad aim of achieving fundamental national transformation through policy, legal and institutional reforms, as well as creating awareness, reorienting the national psyche for the new dispensation and engendering robust public engagement in the constitution implementation process. In addition to this, the KNCHR, NGEC, CAJ and NCIC undertake civic education on a continuous basis.

3. Providing free legal aid throughout the country

The Kenyan *Vision* 2030 identifies lack of access to justice as having a direct link to poverty and, accordingly, recognises the need for access to justice as a pillar for economic development and poverty reduction. The government of Kenya thus recognises that Legal aid is a critical instrument in the enhancement of access to justice, especially for the poor, marginalised and vulnerable. The Legal Aid Bill 2013 and The Draft National Legal Aid Policy 2013 are awaiting Cabinet approval. The National Legal Aid and Awareness Programme will be rolled out in all Counties once the Legal Aid Bill is enacted.

4. Reviewing judicial procedures to speed up the processing of cases of racial discrimination

Measures which the government has taken to speed up cases of racial discrimination include recruitment and posting of 20 new Kadhis, bringing the total number of Kadhis to 35, to reduce the distances travelled by those seeking justice. The Judiciary has established Court Users Committees comprising stakeholders from different agencies. The National Committee on Administration of Justice is mandated to develop institutional linkages with all bodies engaged in administration of justice. In addition, the Constitution has established an independent office of Public Prosecutions mandated to investigate and prosecute cases.

5. Establishing institutional arrangements for Kenya's national human rights institution, by ensuring full compliance with the Paris Principles

The three Commissions established under Article 59 of the Constitution, i.e. KNCHR, NGEC and CAJ are fully established and operational. The commissions are strong constitutional institutions for safeguarding and upholding the principles of equality, democracy and human rights. Racial discrimination is broad enough to incorporate the core mandate of the three commissions. The Commissions budgets are drawn from the Consolidated Fund. It is expected that the challenge of mandate overlap amongst the three institutions will be resolved once they finalise their regulations.

6. **Giving full effect to Article 4 of ICERD on prohibition of hate speech and incitement to hatred including by amending the National Cohesion and Integration Commission Act and the Penal Code**

The Government is in the process of reviewing hate speech legislation to ensure it fits in with the laid down standard in Article 4 of the Convention.

7. **Adopting firm stand against the use of ethnic lines for political purposes; strict and fair investigation, enforcement and sanction of hate speech and incitement to hatred legislation and liability of the media**

The Government is committed to prosecuting all cases of hate speech. For example, on 18 June 2014, the DPP ordered the prosecution of Ms Mishi Juma Mboko, Mombasa County Women Representative, for remarks made on 1 June during Madaraka Day celebrations which amounted to incitement to violence. The NCIC and the DPP are prosecuting at least 7 cases involving use of hate speech by politicians and bloggers on hate speech charges. There is also in place a code of conduct that prohibits journalists from reporting hate speech. The Government has prepared the Cyber Crime & Computer Related Crimes Bill that seeks to criminalise specific offences dealing with hate speech especially through social media. The Kenya Law Reform Commission is also reviewing the Penal Code to align it with the Constitution.

8. **Continuing to fully support the work of the Truth, Justice and Reconciliation Commission and upholding its findings and implementing its recommendations**

The Truth, Justice and Reconciliation Commission (TJRC), which was established in 2008 pursuant to the Truth, Justice and Reconciliation Act, 2008 to investigate serious human rights violations and other injustices dating from December 1963 to February 2008, conducted countrywide investigations and prepared a final report setting out comprehensive recommendations. The final report was published on 7 June 2013. In December 2013, the National Assembly amended the Truth, Justice and Reconciliation Commission Act to make provision for consideration of the TJRC Report by Parliament and grant the AG authority to set in motion a mechanism to monitor its implementation. The report is currently before the National Assembly and as soon as it has been considered and released, the Amendment act recommends that the implementation commences immediately. A task force on the implementation of the TJRC report has also been established.

Many of the TJRC's recommendations are already being implemented. This is especially the case for those that concern judicial reforms, police reforms, mandate of the National Land Commission, the Article 59 Human Rights Commissions and their mandate to inquire into human rights violations, Resettlement and compensation of internally displaced persons (IDPs).

9. **Compensating all victims of the violence that occurred following the 2007 elections and proper prosecution of perpetrators.**

The Multi-Agency Taskforce on the Post-Election Violence cases was established by the DPP on 9 February 2012. The taskforce was mandated to assess the progress of current investigations into the post-election violence, and to decide whether there was enough evidence to pursue 4,575 case files that had been opened. After reviewing the files, the task force concluded that there was inadequate evidence to support any prosecutions. The Government remains committed to implement restorative justice measures involving reconciliation, resettlement and other reliefs to victims of the violence; and it has established a fund of USD 90,000,000 during three years to be used for restorative justice.

10. Providing full attention to the plight of internally displaced persons and ensuring their settlement or resettlement and other reparative measures

663,921 people (245,416 households) were displaced during the post- election violence of 2008. Out of these, 350,000 individuals were persuaded to return to their homes and offered various modes of assistance, including start-up capital, reconstruction of houses and schools and the provision of farm implements. 8,754 households were resettled on Government procured land measuring 20,631 acres. 817 IDP households were paid USD 4,400 each to restart their lives. 397 Kenyan refugees in Uganda have been persuaded to return home leaving a balance of 243 households. During the financial year 2014/2015, the State Department of Devolution was allocated USD 7.8 million for the following activities: construction of more houses for IDPs; and surveying, balloting and allocation of land to individual IDPs. The resettlement of IDPs has however been slowed by a number of factors, including the fact that the original profiling failed to capture all deserving IDPS, and the lack of adequate budgets and personnel to deal with internal displacement. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (No. 56 of 2012), establishes a rights-based response to internal displacement. It establishes a fund that is channelled towards food, housing, medical supplies and grants for IDPs to help them restart their livelihoods. The National Policy on the Prevention of Internal Displacement, Protection and Assistance to Internally Displaced Persons offers further protection.

11. Responding to decisions made by the African Commission on Human and Peoples' Rights and ensuring that all involved marginalised communities and peoples are provided with redress as ordered

On 26 September 2014, the Government appointed the Taskforce on the Implementation of the Decision of the African Commission on Human and Peoples' Rights contained in *Communication No. 276/2003 (Centre for Minority Rights Development on Behalf of Endorois Welfare Council v. Republic of Kenya)*. The Taskforce is mandated to study that decision and to provide guidance on the political, security and economic implications of the decision, to examine the potential environmental impacts on Lake Bogoria and the surrounding area because of the implementation of the Decision and to examine the practicability of the restitution of Lake Bogoria and the surrounding area to the Endorois Community taking into account that Lake Bogoria is classified as a World Heritage Site by the United Nations Economic, Social and Cultural Organisation. The Taskforce has instituted consultations with the County Government and the Endorois people to come up with a way forward.

12. Making operational the machinery and mechanisms for addressing land problems fairly taking into account the historical contexts of land ownership and acquisition

Pursuant to Section 15 of the National Land Commission Act and Article 67 of the Constitution, the National Land Commission in May 2014, appointed a Taskforce to formulate legislation on investigation and adjudication of complains arising out of historical land injustices. The Taskforce is undertaking literature review on the concept of historical injustices with a view to developing a clear, practical, objective and universally acceptable definition of the concept as it applies to land in Kenya, identify the nature of claims arising out of historical land injustices, review comparative experiences of other countries in addressing historical injustices related to land and identify opportunities, challenges and best practices that can inform the Kenyan process, develop guidelines for the investigation of historical injustices to provide for national, communal and individual injustices, Conduct stakeholder and expert consultations to receive input on the issues under review and develop a draft bill that meets provisions of the constitution.

13. **Taking necessary legislative measures and adopting policies to implement the constitutional provisions on community land and minority rights**

The Community Land Bill seeks to provide a legislative framework for the recognition, protection, management and administration of community land.

14. **Putting in place without delay mechanisms necessary for implementing constitutional provisions on ethnic representation in government bodies and offices; extending the requirement for equitable ethnic representation to bodies and commissions established by the Constitution; and ensuring that legislation on political parties and elections to be adopted by the State party will enable the representation of ethnic minorities in elected organs**

Article 38 (2) of the Constitution provides for political rights. It states that every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under this Constitution; or any office of any political party of which the citizen is a member. Further, the Political Parties Act provides for the registration, regulation and funding of political parties. Section 65 of the County Governments Act provides that at least thirty per cent of entry level vacant posts are filled by candidates who are not from the dominant ethnic community in the county. So far only 18 counties are compliant with this rule. The Constitution in Article 100 provides for the promotion of representation of marginalised groups including ethnic minorities. A bill to enable this provision is presently in Parliament.

15. **Ensuring compliance with Article 5 (d) (iii) of the Convention by making the necessary amendments to its legislation and administrative procedures in order to implement constitutional provisions on citizenship; ensuring that all citizens are treated equally and without any discrimination and receive identity documents; and implementing the decision of the African Committee of Experts on the Rights and Welfare of the Child in respect of the right of Nubian children to acquire national identity papers**

The Kenya Citizenship and Immigration Act addresses certain issues of discrimination that were a matter of concern in earlier legislation on immigration matters. The law now allows women to transfer citizenship to their spouses and children. The Act contains provisions for the registration of all stateless persons. A taskforce is ascertaining the situation regarding stateless individuals in Kenya so as to work out the modalities for implementing the law. In light of the foregoing, the Government is well in the process of implementing recommendations made by the African Committee of Experts on the Rights and Welfare of the Child in *Communication No. Com/002/2009: Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. the Government of Kenya.* These recommendations *inter alia* were that the Government take all necessary legislative, administrative and other measures to ensure children of Nubian descent in Kenya that are otherwise stateless can acquire Kenyan nationality and have proof of such nationality at birth.

16. **Taking measures to check overcrowding in the slums of Nairobi and minimizing the situation in the slums being exploited by politicians; and investing in efforts commensurate with the scale of the problems in order to address ethnic tensions in the slums**

The Government has committed to ensuring the right to adequate housing through a number of policies, legislative and programmatic interventions. These include: the National Housing Policy currently under review to reflect constitutional imperatives on the provision

of adequate, affordable and quality housing in sustainable human settlements; the Draft National Slum Upgrading and Prevention Policy which provides for better housing particularly for youth and women; and the Draft National Building and Maintenance Policy to ensure that all Kenyans have access to better housing facilities. The Draft Policy seeks to ensure a consistent approach to the maintenance of the built environment to safeguard health, safety, environmental standards, convenience and comfort of users.

Other interventions include development of a framework of incentives to encourage the private sector to invest in affordable quality housing; the introduction of appropriate cost effective building technology such as the Interlocking Stabilized Soil Blocks which can reduce costs by up to fifty percent of the cost of materials. To this end, Langata decanting site has been developed to allow for relocation of residents in informal settlements to pave way for redevelopment. About 1,800 households from Kibera Sowete have been relocated.

17. Addressing ethnic and regional disparities; and allocating necessary resources to address the lack of provision of and access to public services in marginalised areas

In 2011, the CRA identified 14 counties as the most marginalised in the country. According to the criteria for identifying marginalised areas for the purposes of the Equalization Fund, Turkana County received the lion's share of the allocation with USD 3,074,305, followed by Mandera with USD 2,824,730, Wajir, USD 2,722,632 and Marsabit USD 2,586,500. Other counties benefitted as follows: Samburu USD 2,541,123, West Pokot USD 2,529,778, Tana River USD 2,507,090, Narok USD 208 million, Kwale USD 2,325,581, Garissa USD 2,291,548, Kilifi USD 2,234,827, Taita Taveta USD 2,200,794, Isiolo USD 2,178,106 and Lamu USD 2,110,040.

18. Stepping up educational efforts to promote national cohesion and reconciliation including by ensuring that education effectively addresses ethnic prejudices and stereotypes as well as the history of inter-ethnic violence and by utilizing media that reach all segments of the population

There are currently more than 25 local language radio stations in Kenya and this enables proper and easy dissemination of information to the masses. TV and radio talk shows are also used to bring people together when they have discussions on current affairs. The Media Act also helps in monitoring the content of broadcasts. Legal sanctions have also been put in place as deterrents for any inciters.

19. Inviting the international community to discharge its responsibility towards refugees under the principle of burden sharing

Kenya currently hosts over 600,000 refugees in Dadaab, Kakuma and Urban settlements. The influx of immigrants and small arms infiltration is raising a security concern in the country. Kenya has entered into a tripartite agreement with Somalia and the United Nations High Commissioner for Refugees to facilitate the voluntary repatriation of refugees to Somalia.

20. Including in its next periodic report statistical data on the enjoyment of economic and social rights from the 2009 national census

While this Challenge remains, the present report has more data than earlier reports presented to treaty body Committees.

21. Considering ratification of international human rights treaties that Kenya has not ratified with a bearing on racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Treaty Making and Ratification Act which is meant to facilitate the ratification of treaties and protocols in Kenya in accordance with the Constitution is already in place and the government is in the process of making operational the Office of the Registrar of Treaties as established by the Act.

22. Giving effect to the Durban Declaration and Programme of Action and taking into account the outcome document of the Durban Review Conference when implementing the Convention in its domestic legal order; and reporting on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level

The Government believes that all the policy, legislative and administrative measures described in this report support implementation of the Durban Declaration and Programme of Action.

Annex

List of Cases

Alex J Wagunya v. Attorney General (2013) eKLR

Ali Mwakwere v. Robert M. Mabera and 4 others (2012) eKLR

Centre for Minority Rights Development on Behalf of Endorois Welfare Council v. Republic of Kenya, Communication No. 276/2003

Coalition for Reform and Democracy (CORD) and Kenya National Commission on Human Rights v. Republic of Kenya (Petition No. 628 and Petition No. 630 of 2014)

Gitobu Imanyara & 2 Others v. Attorney General & 2 Others (2013) eKLR

Hersi Hassan Gutale and Another v. Attorney General and Another (2013) eKLR

Independent Policing Oversight Authority & another v. Attorney General & 660 others (2014) eKLR

Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. the Government of Kenya: Com/002/2009

Institute for Social Accountability & Another v. National Assembly & 4 Others (2015) eKLR

John Kabui Mwai and 3 Others v. Kenya National Examination Council and 2 Others (2011) eKLR

Kituo cha Sheria v. Interim Independent Electoral Commission & 2 Others (2013) eKLR

Monica Jesang Katam v. Jackson Chepkwony & Another (2011) eKLR

Muigai v. John Bosco Mina Kariuki & Jerioth Wangechi Muigai (2014) eKLR

Nicky Njuguna and 3 Others (2013) eKLR

P.A.O. & 2 others v. Attorney General (2012) eKLR

R v. Allan Wadi (Criminal Case No. 1 of 2015)

Republic v. Moses Kuria (CMCC No. 904 of 2014)

Republic v. The Head Teacher, Kenya High School and Another Ex-parte SMY (a minor suing through her mother and next friend A b) (2012) eKLR

Rose Wangui Mambo & 2 Others v. Limuru Country Club & 17 others (2014) eKLR

Salim Awadh Salim and 10 Others v. Commissioner of Police and 3 Others (2013) eKLR

Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 3 Others (2013) eKLR

Seventh Day Adventist Church (East Africa) Limited v. the Minister for Education (Petition No. 431 of 2012)

Zipporah Gaiti v. Samson Rukunga (2011 eKLR)